

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TRINA ROADHOUSE, et al.,
Plaintiffs,
vs.
PATENAUDE & FELIX, APC,
Defendant.

Case No. 2:13-cv-00560-GMN-CWH

ORDER

This matter is before the Court on Defendant's Motion Seeking Leave of Court to File First Amended Answer (#14), filed October 8, 2013; Plaintiffs' Response (#19), filed October 25, 2013; and Defendant's Reply (#21), filed November 4, 2013.

The complaint in this matter was filed on April 1, 2013. (#1). Defendant filed its answer on August 30, 2013. (#8). Shortly thereafter, Plaintiff filed a motion to strike some, but not all, of Defendant's affirmative defenses. (#10). Defendant filed an amended answer (#12) on October 8, 2013, which it withdrew on the same day. (#13). Along with the notice of withdrawal(#13), Defendant filed a motion for leave to file an amended answer. (#14). The motion does not include an attached proposed amended answer as required by Local Rule 15-1(a). In response, Plaintiffs note that the request does not comply with the Local Rule and ask the Court to deny the motion because the failure deprives both Plaintiffs and the Court of an opportunity to evaluate the proposed amendments. In reply, Defendant concedes the failure to comply with LR 15-1(a), but argues that the failure has been cured because the proposed amended answer is attached to the reply. It further argues that Plaintiffs arguments regarding the amended complaint are now moot because any substantive deficiencies are cured by the proposed amended complaint as well.

DISCUSSION

Defendant acknowledges that Local Rule 15-1(a) requires that “[u]nless otherwise permitted by the Court, the moving party shall attach the proposed amended pleading to any motion to amend

1 so that it will be complete in itself without reference to the superseding pleading.” Defendant also
2 acknowledges that its motion does not comply with the Local Rule. The Court will deny the
3 motion to amend based on the failure to attach the proposed amended pleading. Attaching the
4 proposed amended answer to the reply does not cure the failure as the reply raises new matters for
5 which Plaintiffs did not have the opportunity to respond. *See Zamani v. Carnes*, 491 F.3d 990, 997
6 (9th Cir. 2007) (citation omitted) (where a moving party presents new matters for the first time in a
7 reply brief, the court may either refuse to consider the new matters or allow the opposing party an
8 opportunity to respond). Rather than permit a surreply, the Court will require new briefing on the
9 issue.

10 The undersigned separately notes that the parties have not submitted a stipulated discovery
11 plan and scheduling order in accordance with Local Rule 26-1. It is not appropriate for parties to
12 self-impose a stay pending resolution of potentially dispositive motions. *See Tradebay, LLC v.*
13 *eBay, Inc.*, 278 F.R.D. 597 (D. Nev.) (the Federal Rules do not provide for automatic or blanket
14 stays of discovery when potentially dispositive motion is pending). Plaintiff’s pending motion to
15 strike (#10) is not dispositive of all claims and defenses and, regardless of its outcome, discovery
16 will go forward on the remaining claims and defenses.

17 Based on the foregoing and good cause appearing therefore,

18 **IT IS HEREBY ORDERED** that Defendant’s Motion Seeking Leave of Court to File
19 First Amended Answer (#14) is **denied without prejudice**. Defendant shall file its motion for
20 leave to file an amended answer by **Friday, April 11, 2014**. Plaintiffs shall have until **Friday,**
21 **April 18, 2014** to file their response, if any.

22 **IT IS FURTHER ORDERED** that Plaintiffs’ shall initiate the scheduling of the Fed. R.
23 Civ. P. 26(f) meeting by **Friday April 11, 2014**. The parties shall submit a stipulated discovery
24 plan and scheduling order by **Friday, April 18, 2014**.

25 DATED: April 2, 2014.

26 
27 **C.W. Hoffman, Jr.**
28 **United States Magistrate Judge**